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No. 97-1919

In the Supreme Court of the United States
October Term, 1997

Bryan L. Beckham, et al., *Petitioners,*

v.

Union Pacific Railroad Co., et al., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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PRELIMINARY STATEMENT

Petitioners submit this brief in further support of their Petition for a Writ of Certiorari, filed May 27, 1998.

ARGUMENT

As Respondents concede in their Brief in Opposition, the crux of the dispute in this litigation is the Eighth Circuit's unprecedented application of the federal "discovery rule" to the accrual of ERISA benefit claims. In our Petition for a Writ of Certiorari we have shown that the Eighth Circuit stands alone on this fundamental issue; eight other Circuits have rejected the federal "discovery rule," holding that an ERISA § 502(a)(1)(B) benefits claim does not accrue until the claim is made and formally decided by a named claims fiduciary in a clear written decision which contains the specific information required by ERISA. See Petition for a Writ of Certiorari, pp. 12-15. Try as it may, Respondents' Brief in Opposition fails to establish the absence of a conflict; if anything, Respondents' brief shows precisely why this Court should issue a writ of certiorari and decide which accrual rule governs ERISA benefit claims.

First, notwithstanding their assertion that the Eighth Circuit's holding manifests "[a]pplication of . . . settled law in federal question cases in which Congress has not provided a different accrual rule," Brief for the Respondents in Opposition, p. 10, Respondents have not pointed to a single ERISA benefits case in which the court actually applies the federal "discovery rule." And while Respondents urge that the Eighth Circuit's decision is "entirely consistent" with the majority rule, Respondents do not dispute that the other Circuits actually *reject* the central premise of the federal "discovery rule" -- that representations about a participant's benefit prior to formal denial by a plan fiduciary trigger claims accrual for statute of limitations purposes. See Petition for a Writ of Certiorari, p. 14. Instead, in a new argument they never made below,

Respondents urge this Court to discount or dismiss each of the other Circuit decisions either because of their "particular facts" (Miles) or because the decisions addressed the accrual question in the context of an ERISA preemption defense (Stevens, Rodriguez, Menhorn, Quinn, and Paris). Neither argument helps Respondents' cause here. The Miles Court never suggested that it would have applied the federal "discovery rule" but for the "particular facts" therein, and no subsequent decision has limited Miles to its facts. Respondents' second contention, in essence, is an argument (which actually undercuts the alleged uniform application of the "discovery rule") that ERISA benefits claims can accrue at different times for different purposes depending on the defenses (i.e., ERISA preemption) raised to those claims. There is absolutely nothing in ERISA's legislative history or the case law to suggest *that* result.

Indeed, in their attempts to rescue the Eighth Circuit's decision from its judicial isolation, Respondents are forced to posit a legislative design that makes no sense at all. Whatever the status of the "discovery rule" in other contexts, it is inconsistent with the claims accrual rules applied in other provisions of ERISA. Those decisions have uniformly rejected the federal "discovery rule" in favor of an actual knowledge test and tipped the policy balance in favor of participants and those acting on their behalf. See, e.g., Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp., 118 S. Ct. 542 (1997) (ERISA § 4301 withdrawal liability claim); Wolin v. Smith Barney Inc., 83 F.3d 847, 854-855 (7th Cir. 1996) (ERISA §§ 502(a)(2) and (a)(3) breach of fiduciary duty claim). There is no indication either in the case law or in ERISA's legislative history that Congress thought participants had fewer rights to information and actions relating to their own benefits, much less that it intended there to be separate accrual rules

depending on the type of claim presented. Petitioners urge the Court to affirm Congress' intent that participants have the same rights when seeking benefits as they do when seeking to remediate fiduciary breaches.

Finally, Respondents admit that this case raises important policy questions for employees and employers alike. Respondents urge that the Eighth Circuit's federal "discovery rule" of benefit claim accrual is necessary to protect the interests of plan sponsors. We have shown that the majority rule furthers the goals of Congress in passing ERISA to protect the rights of plan participants and beneficiaries by providing them with understandable information about their pensions and with the opportunity to claim benefits at retirement, as well as the courts' interest in avoiding multiple and premature benefit actions. See Petition for a Writ of Certiorari, pp. 17-19. But however one strikes the policy balance, the fact remains that this is one of the most important questions in the ERISA claims area, and that only this Court can answer it.

Respectfully submitted,

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